

existing capability to retrieve all e-mail messages potentially encompassed by the committee's request. The White House attorneys explained that the e-mail system implemented by the Bush administration and inherited by the Clinton administration did not save e-mail records in retrievable form. Under the Bush administration's system, only weekly backup tapes for the entire computer network were maintained up until the Clinton administration put a new system in place in July 1994. The White House actually has produced responsive e-mail created after July when they put their new system into place. So there was a problem on how to proceed under the technical constraints imposed by the Bush administration.

Finally, this matter was resolved through a more specific definition by the committee of the e-mail request. In other words, we were able to identify particular weeks instead of a broad request over an extended period of time involving huge numbers of people. The White House committed a major outside computer contractual firm to assist it, and we have now been receiving those e-mail. We still have 1 or 2 weeks to go in terms of furnishing them to the committee, although additional requests have been made in recent days I understand.

In any event, it is important to recognize that these documents were produced, and, in fact, one produced contained little meaningful information.

Let me turn to the argument that is made that we need an indefinite extension in order to await the completion of the trial that is about to begin in Little Rock. When the Senate passed Resolution 120 creating the special committee and defining its powers and responsibilities, the independent counsel's investigation was already well under way. The Senate recognized that fact and provided for it in the resolution. It was not the intent of the Senate, as reflected in the resolution, that the special committee's work be delayed, or put on hold because of the activities of the independent counsel. In fact, the independent counsel has along the way raised concerns about the committee's investigation. The committee declined to suspend its work to accommodate those concerns, and on October 2 of last year Chairman D'AMATO and I wrote to independent counsel Kenneth Starr and advised him that the committee intended to proceed with its investigation contrary to wishes expressed by him in his letter of September 27. We said in that letter,

We believe that the concerns expressed in your letter do not outweigh the Senate's strong interests in concluding its investigation and public hearings into the matters specified in Senate Resolution 120 consistent with section 9 of the resolution.

In other words, on October 2, we said to the independent counsel we are going to go ahead despite your inquiries in order to complete by the date provided in the resolution, February 29.

We are not going to await the outcome of your trial. Now we are being told just the opposite. Now we are being told we must await the outcome, and therefore we must extend the inquiry beyond the completion of the pending trial.

Indeed, four witnesses have informed the committee that they will invoke their right against self-incrimination and refuse to testify. But that is no reason for the committee to extend this investigation into the political season, a result the Senate avoided when it provided the funding for the investigation only through February 29, 1996. That problem was recognized at the time. It was part of the thinking at the time. And the thinking was that we would not defer if that became the issue before us to the independent counsel.

In fact, in that letter of October 2 to independent counsel Starr, Chairman D'AMATO and I said, with respect to the position of the special committee in seeking the testimony of defendants in criminal trials initiated by the independent counsel, and I will quote:

The special committee does not intend to seek the testimony of any defendant in a pending action brought by your office, nor will it seek to expand upon any of the grants of immunity provided to persons by your office or its predecessor.

That was the position that the committee took on October 2 as we projected forward as to what our work schedule would be.

It must be understood that delaying beyond the trial will not affect the ability of witnesses to assert their privilege against self-incrimination. In fact, I think it is fair to say that they can be expected to continue to assert their fifth amendment privileges. Even the availability of defendants, if one were to decide to seek them, would be affected by the trial's outcome. If the defendants are convicted, appeals will likely follow probably on numerous grounds and take months, years. All my colleagues know the workings of the legal system. During that time, the defendants will retain their fifth amendment privilege notwithstanding the prior trial and conviction. Even if acquitted, they retain the privilege for charges other than on those on which they were tried. So it is very unlikely you will obtain this testimony in any event.

Second, this trial is being treated as though it is going to be in camera. In other words, that this trial is going to begin and that no one is going to know what the testimony is at the trial.

Now, obviously, that is not the case. I am told, in fact, that the press and media are already moving from here in Washington to Little Rock, and so I anticipate that the trial will be well covered and well reported.

No one knows, of course, how long the trial will last. Estimates are 10, 12 weeks, maybe longer. I think this letter that we sent—and I will discuss it at greater length subsequently because

I take it my colleagues wish to speak, but the October 2 letter which Chairman D'AMATO and I sent to Independent Counsel Starr is instructive in this regard because it operated on the premise that we had to complete our work, that we were not going to be placed in the posture by the independent counsel of backing up our work behind his work. I think that was a wise position then. I think it remains a wise position.

I am very frank to tell you, as I indicated at the outset, that the proposal for \$600,000 funding and the unlimited extension of time is a proposal that disregards concerns expressed here a little less than a year ago, concerns that Senator DOLE has expressed on other occasions with great vigor, completely disregards concerns about extending the investigation deep into a Presidential year, and therefore I think it undermines the credibility of the investigation and creates the public perception that it is being conducted for political purposes.

I do not think there is justification for the proposal for an indefinite extension of time. I am very much opposed to it.

Senator DASCHLE has come forward with an alternative proposal that I think is reasonable. He has not said that we are going to simply stick with Senate Resolution 120. He has offered a proposition to extend the hearing schedule to the beginning of April and some additional time to do the report. I think the committee could complete its inquiry within that time period, and I think that will give some assurance to all of us here and to the American people that this investigation is being conducted in a fair, thorough and impartial manner.

Mr. President, I yield the floor.

Mr. LOTT addressed the Chair.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. LOTT. Mr. President, I do wish to be heard on the issue of the White-water extension, but first I have a unanimous consent request.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. LOTT. Mr. President, I ask unanimous consent that the Senate immediately proceed to executive session to consider the nomination of Gen. Barry R. McCaffrey to be Director of the Office of National Drug Control Policy, reported out of the Judiciary Committee today. I further ask unanimous consent that the nomination be confirmed, the motion to reconsider be laid upon the table, that any statements relating to the nomination appear at the appropriate place in the RECORD, the President be immediately notified of the Senate's action, and that the Senate then return to legislative session.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.